

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 79 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RUSHABHKUMAR KESHAVLAL JAIN

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR KT DAVE, AGP, for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Ahmedabad, passed an order on December 16, 1999, in exercise of powers under Section 3(2) of the PASA Act, detaining the petitioner under the provisions of the Prevention of Black Marketing

and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short).

2. In the grounds of detention, the detaining authority observed that cotton seed and pamoline oil in large quantity was traded in by the detenu in breach of Food Adulteration Rules. The petitioner was engaged in activities which are detrimental to smooth supply of such essential commodities for his personal gain and, therefore, he is required to be detained under the PBM Act in order to immediately prevent him from pursuing his activities. The authority also observed that other less drastic remedies are not possible to be resorted and detention under PBM Act is the only efficacious remedy for the purpose.

3. The detenu has challenged the order of detention on various counts. Mr. Thakkar has, however, restricted his arguments to the ground of delay in forwarding the representation by the detaining authority. He has drawn attention to the affidavit in reply filed by the detaining authority, particularly paragraph 14. Mr. Thakkar submitted that, admittedly, the representation was received by the detaining authority on 3rd January, 2000 and was forwarded on 11th January, 2000, for which no explanation is tendered. The authority had then become functus officio and was required only to forward the representation and no time could have been consumed by the detaining authority in forwarding the representation. This has affected the right of the detenu of making an effective representation which would vitiate the continued detention. The petition may, therefore, be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, opposed the petition on behalf of respondents No. 1 to 3 and Ms. Davawala opposed the petition on behalf of the Central Government.

5. Mr. Dave submitted that the detaining authority received the representation on 3rd January, 2000 and delay is caused because the detaining authority called for the parawise remarks from the sponsoring authority and, therefore, the delay caused in forwarding the representation is explained. The petition may, therefore, be dismissed.

6. Considering the contentions raised before this Court, what is required to be considered is whether there is a delay in forwarding the representation.

7. There is no dispute about the fact that representation dated 31st December, 1999 was received by the detaining authority on 3rd January, 2000 and forwarded to the Government on 11th January, 2000. The detaining authority had become functus officio then and was, therefore, required only to forward the representation immediately. An attempt is made to explain the delay by stating that parawise remarks of sponsoring authority were called for and were sent to the Government along with the representation. In this regard, factually, it may be noted that the affidavit is silent on aspects of details as to when the parawise remarks were called for from the sponsoring authority, when they were received from the sponsoring authority by the detaining authority and, therefore, as such there is no reasonable explanation coming forward from the detaining authority for the time between 3rd January, 2000 and 11th January, 2000.

8. Apart from the above factual aspect, another factor that cannot be lost sight of is that the detaining authority had become functus officio and the representation could not have been considered by it. The only authority that could have considered the representation was the competent authority of the State Government and, therefore, the representation should have reached that competent authority of the State Government immediately. Whether parawise remarks are required or not was a question that was required to be decided by that competent authority of the State Government and, as such, calling for the parawise remarks by the detaining authority was not a competent act on part of the detaining authority. Differently put, it was an action without application of mind of competent authority of the State Government, who could have considered the representation. This is not permissible in view of the decision in the case of Navalshanker Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496 and the decision in the case of Paulswamy v. Union of India, 1999(4) SCC 415.

8.1 In Paulswamy, the Apex Court observed :

".....There was no application of mind by the competent officer as to whether it was necessary to call for the comments of the sponsoring authority. In other words, this delay from 28.10.1998 to 1.11.1998 being uncalled for has to be regarded as unreasonable and, therefore, fatal in view of the ratio laid down by this Court in Venmati Selvan."

In view of the matter, the petition deserves to be allowed on account of delay in forwarding the representation.

9. In view of the above discussion, the petition is allowed. The impugned order of detention dated 16.12.1999 is hereby quashed. The detenu-Rushabhkumar Keshavlal Jain is ordered to be set at liberty forthwith, if not required any other matter. Rule is made absolute, with no orders as to costs.

[A.L. DAVE, J.]

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